

Subdividing the Commons: Distributional Conflict in the Transition to Individual Property in Kenya's Maasailand

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Abstract

The evolution of common property rights to private, individualized regimes continues to puzzle development scholars and practitioners. Though much effort has been spent on identifying factors that motivate the transformation of property rights or in identifying the outcomes of such transformation, the process of transformation is yet to be more fully understood. This paper discusses the internal processes and decisions that define the transition from collectively held group ranches to individualized property systems amongst the Maasai pastoralists of Kajiado district in Kenya. It seeks to answer the question of *how* this transformation occurred and how the new property regime got implemented. This paper addresses these questions and other emerging puzzles as it discusses land allocation and distribution during the process of group ranch subdivision.

Findings suggest that the transition to individual property is a political process that abstracts from the wider social and political order. Actors with differential access to resources, including institutions, will compete to achieve their preferred property rights structure, but in an environment where levels of accountability are low change may serve to re-distribute collective assets to the elite and their associates. Land concentration may be inevitable. The study also begins to illustrate how norms and rules that have structured relations within small societies may change when confronted by the state and the market.

Introduction

While much effort has been spent on identifying factors that motivate the transformation of property rights or in explicating the outcomes of such transformation, considerably less information exists on processes that link triggers with outcomes (Banner, 2002; Neale, 1998; Feeny, 1988; Bardhan, 1989). The process of transformation is yet to be more fully understood. Change towards individual property is understood to be a consequence of benefit maximizing calculations among individuals whose interest is to eliminate the costs of collective resource appropriations while individualizing the gains from change (Anderson and Hill, 1975; North and Thomas, 1973; Demsetz, 1967). But understanding that transformation is a consequence of individual benefit-cost calculus hardly conveys much about how the solution of individual property is reached or what makes a new property structure binding.

This paper discusses the internal processes and decisions that define the transition from collectively held group ranches¹ to individualized property systems among the Maasai pastoralists of Kajiado district in Kenya. It seeks to answer the question of *how* this transformation occurred and how the new property regime got implemented. In attempting to answer this question, several other puzzles emerge: Why did rational individuals (i.e. the group ranch members) expect the management committee to conduct subdivision and land distribution according to the agreed principle of equal allocation? Why did the management committee not honor this agreement? Why did those who were least likely to be advantaged by an equal land distribution, the wealthy herders, not oppose the proposed allocation formula? This paper addresses these puzzles as it discusses land allocation and distribution during the process of group ranch subdivision. Findings suggest that this institutional change was a political process that abstracted from the wider political economy. Actors with differential access to resources, including

¹ A group ranch is land that has been demarcated and legally allocated to a group such as a tribe, a clan, section, family or other group of persons (Kenya, Republic of, 1968a). The group ranch is composed of a body of members to whom legal title has been jointly awarded, and a management committee that is elected by the body of members. The management committee is responsible for coordinating and implementing development projects on the group ranch. Although land is held in common by all group members, certain rights, such as residency rights, are assigned to individuals. The group as a corporate body also retains some rights such as control over grazing rights, tillage and water resources. Group ranches were introduced in 1968 by the Kenya Government in an attempt to control environmental degradation and to increase herd productivity in Kenya's semi-arid areas.

institutions, compete to achieve their preferred property rights structure, but in an environment where levels of accountability are low change may serve to re-distribute collective assets to the elite and their associates. Land concentration may be inevitable.

The importance of property rights as a policy issue cannot be overstated. By assigning ownership to valuable assets and by designating who bears the rewards and costs of resource use decisions, property rights institutions structure incentives for economic behavior (Libecap, 2003, 1989). By allocating decision-making authority, property rights institutions influence the distribution of power within society. Indeed, it has been argued that lack of access to productive resources is fundamental to the extreme poverty in which hundreds of millions of agrarian people in the world find themselves today. An understanding of the processes that define property institutions is crucial for reform to be possible. It may illuminate the conditions under which individuals will voluntarily change their systems or reject outside attempts to initiate such change. It may well reveal that change may occur due to conditions that policy planners can only marginally control.

I first present the analytical framework that guides the study, following which I present the setting of the study, the findings from recent research and the data collection methods. Later sections of this paper address the decision rules, procedures and outcomes of subdivision. The policy implications of this process of transformation are discussed in the conclusion.

Distributional Arguments and the Transformation of Property Rights

The dominant view among property rights scholars is that the development of exclusive property rights over land and related natural resources is triggered by changes in the economy such as technological innovation, changes in relative factor scarcities, and the creation of new markets (Anderson and Hill, 1975; North and Thomas, 1973, 1977, 1981; Demsetz, 1967). Such changes cause the benefits of claiming rights in the emerging and privatized sector to exceed the costs of negotiating and enforcing those rights (Demsetz, 1967). Individuals seek to adjust property rights to capture these new opportunities.

But economic gains on their own may be insufficient to induce the implementation of alternative property rights arrangements. Distributional conflicts and political intervention are crucial determinants of the path of institutional change (Libecap, 2003, 1998, 1989; Platteau, 2000, 1998; Eggertsson, 1998, 1990; North, 1990). Institutions are not always created to be socially efficient; they may sometimes be created or evolve to serve specialized interests, particularly of those that have the power to devise rules (North, 1990).

Because alternative property rights arrangements distribute costs and benefits in society in different ways, the allocation of benefits will likely be a crucial concern in the transformation of property rights, and the process will be political and controversial (Libecap, 2003, 1989; Knight, 1995; Firmin-Sellers, 1995). Actors in the political milieu will compete to define and re-define the distribution of wealth and power under the new arrangement. Potential losers and winners will attempt to protect their benefits under the status quo or seek new advantages within the new structure. Actors with varying capacities to influence outcomes will engage in bargaining and negotiation to assert their claims and to influence outcomes. A careful analysis of this distributional conflict and how it is resolved provides a better understanding of the evolution of property institutions (Libecap, 1989; Knight, 1992; Firmin-Sellers, 1996).

Bargaining over property rights occurs in diverse arenas (Lund, 2002). It may occur in courts, village hearings, local councils, village chiefs, development projects, civil servants, or any institution that lends authority to property arrangements. Consequently, there is a need to extend beyond formal-legal political institutions, such as politicians and courts, and to include other institutions, such as customs, that actors use to pursue their goals (Firmin-Sellers, 1996).

The nature and intensity of distributional conflict is influenced by whether benefits in the new arrangement will be concentrated and on how diverse the interests of the bargaining parties are (Libecap, 1989). Both aspects are heavily dependent on the formula used to allocate and distribute benefits. For example, rents can be divided among customary users in proportion to their respective rates of use in the status quo arrangement or they can be divided equally among existing rights holders (Platteau, 2000). Proportional division, having higher information requirements, disadvantages low

intensity users whose membership in the group entitles them to equal use of collective resources. Though equal division has low information requirements, it is likely to generate intense opposition from individuals who are benefiting disproportionately from high intensity usage of community resources. Scholars suggest that proportional division is a more politically desirable alternative (Libecap, 1989; Roemer, 1989). Others would argue that this is an empirical determination much dependent on social norms of equity and fairness (Ensminger, 1992).

The outcomes of political bargaining therefore depends on the power and influence of actors as well as on how the proposed distribution of wealth and power will blend in with prevailing norms. Institutional change may be slowed and even blocked if the proposed distribution in the new arrangement is highly concentrated (Libecap, 1989).

How is conflict resolved so that the new property rights structure is implemented? Some actors may invoke the authority of the state to terminate severe conflicts over distribution (Firmin-Sellers, 1996, 1995). In other cases, powerful actors with a relative bargaining advantage are able to constrain others to comply with new institutional rules (Knight, 1992). How do they do this? Knight argues that the relative bargaining power of actors, itself a function of the resources available to actors, affects the credibility of commitments during bargaining. Weaker parties with fewer resources, who face higher costs in extended bargaining, are less likely to challenge a stronger parties' commitment. In addition, threats of retaliatory action from a stronger actor, though less desirable, may serve to increase pressure on the weaker party to adopt a less-preferred alternative. Consequently, outside of direct state intervention, power asymmetries among actors can resolve conflicts over the assignment of property rights. Nonetheless Knight recognizes the possibility of weaker parties having marginal influence, in which case conflict is not resolved and instead recurs.

The preceding framework creates several expectations:

1. Distributional conflict, determined by the mode of allocation chosen, is greatest where the new arrangement concentrates benefits in the hands of a few interests, particularly where social norms of fairness dictate a more equitable if not equal solution;

2. Actors use a variety of political institutions, formal and customary, to assert their claims and to achieve the assignment of their preferred property rights;
3. Conflict is resolved through coercion using the instruments of the state or through a more decentralized bargaining process among societal actors, but a process that is characterized by an asymmetry of power among the actors. The more powerful actors are able to constrain the choices of weaker ones, forcing compliance with the new institutional rules.

The following sections attempt to analyze the fit between these theoretical predictions and empirical reality in the subdivision of the Maasai group ranches.

The Setting²

Location of Kajiado District

Kajiado district is located on the southern tip of the Rift Valley province, one of Kenya's eight provinces (Figure 1). A province is part of the country's administrative system; and is further divided into districts, divisions, locations and sub-locations. The district is divided into seven administrative divisions namely: Ngong, Magadi, Isenya, Central, Namanga, Mashuru and Loitokitok, which are further divided into 47 locations and 120 sub-locations (Figure 2). Central division is the largest in the district and hosts the district headquarters, Kajiado Town.

The district has a bimodal rainfall pattern. The short rains fall between October and December and the long rains between March and May. Annual rainfall in the district is strongly influenced by altitude. Loitokitok, on the foothills of Mt. Kilimanjaro in the south, has the highest average rainfall of about 1250mm (49 inches). Lakes Magadi and Amboseli, the lowest points in the district, have the lowest average rainfall of less than 500mm (20 inches) per annum. Other parts of the district receive an average of about 500 mm. Apart from being low, the rainfall is highly variable from year to year. Figure 3 presents rainfall distribution in the district while Appendix I presents rainfall data from

² Much of this information is obtained from the following documents: Kajiado District Development Plan, 2002-2008 (Kenya, Republic of 2001), Kajiado District Atlas (Kenya, Republic of 1990) and Kajiado District poverty strategy report (SNV/SARDEP, 1999).

specific stations in Kajiado district that are in the general vicinity of the group ranches studied.

Temperatures in the district also vary with altitude and season. The highest temperatures of about 34⁰C (93⁰F) are recorded around Lake Magadi, while the lowest minimum of about 10⁰C (50⁰F) is experienced at Loitokitok on the eastern slopes of Mt. Kilimanjaro.

Based on the distribution of these rainfall and temperature regimes, about 92% of Kajiado district falls in the arid and semi-arid lands of Kenya. Ranching forms the dominant land use in ASAL areas. Rain fed agricultural potential however exists in the higher altitude areas of Kajiado district that receive higher rainfall. These areas comprise not more than 8% of the district.

Population Structure and Composition

Kajiado district has one of the highest population growth rates in Kenya. Between 1989 and 1999 alone the population increased by 57%. While the population is predominantly Maasai, the district is also occupied by non-Maasai groups such as the Kikuyu, Kamba, Luo and Somali. A significant portion of the district's population increase can be attributed to the influx of the non-Maasai groups primarily Kikuyu and Kamba cultivators moving away from the overcrowding in the central highlands. Only about half or even less is due to natural growth among the Maasai themselves.

Table 1 below presents Kajiado district's ethnic composition.

Table 1: Kajiado District Population: Ethnic Composition

Ethnic Group	1969		1989		Increase (69-89) %	Annual Growth %
	Number	% of Total	Number	% of Total		
Maasai	58, 961	68.6	146, 268	56.55	148.1%	4.9
Kikuyu	16, 258	18.9	61, 446	23.96	277.9	7.2
Kamba	4, 321	5.0	20, 755	8.02	380.3	8.6
Luo	1, 612	2.0	8, 084	3.13	401.5	8.9
Luhya	1,166	1.3	5,416	2.09	364.5	8.4
Others	3, 585	4.2	16, 710	6.25	366.1	8.4
Total	85, 903	100	258, 679	100	201.1	6.0

Source: SNV/SARDEP, 2001.

Though the district is on average sparsely populated its distribution is highly uneven. Densities range from 41 persons/Km² in parts of Ngong division to a low of 4-

7.6 persons/Km² in some locations such as Torosei in Central division, Oldoinyo Nyokie in Magadi division and Lenkism in Loitokitok. The sparsely populated areas are much more arid than the rest. High densities in the Ngong division are largely due to its proximity to Nairobi and also immigration by cultivating communities.

Socio-Cultural and Political Organization

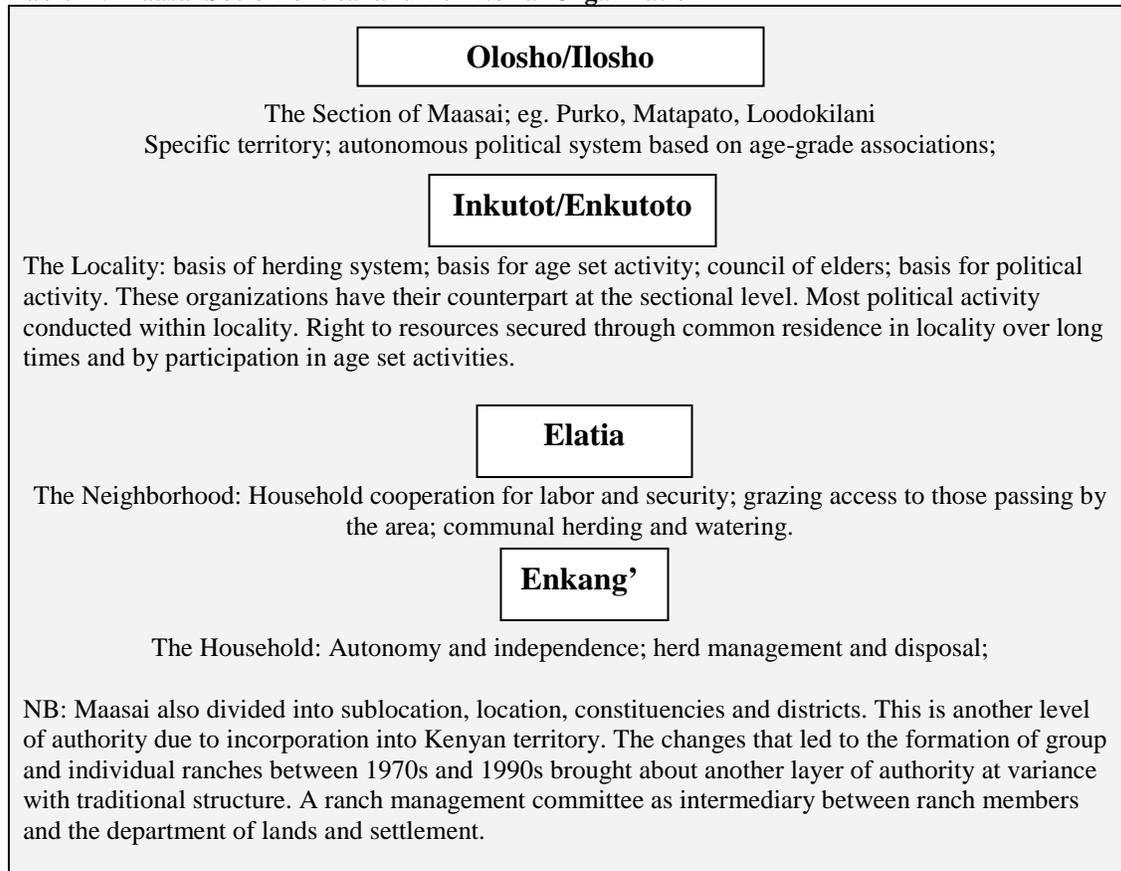
The Maasai are a pastoral people with livestock as the basis of their economic livelihood, the focus of social relations, and a critical element of ethnic self-definition. Pastoralism was traditionally considered to be the only worthy pursuit. Tilling the earth was regarded as a degrading enterprise. This often quoted 'pure' form of pastoralism is rapidly changing as Maasai confront formal markets, state intervention, immigrants, and land pressures. Maasai are now increasingly engaged in agriculture, trade, and formal employment (Kituyi, 1990). Nonetheless they have retained some herd mobility and 'being people of cattle' is still core to self identification.

The social, political and economic organization of the Maasai has been extensively documented. I provide a brief description of these systems and draw from the following works: Spencer (1997, 1993, 1988); Holtzman (1996); Mol (1996); Kituyi (1990); Halderman (1989); Kipury (1989); Doherty (1987); Galaty (1989, 1981); Ingule (1980); Berntsen (1979a); Baxter and Almagor (1978); Jacobs (1972,1971); Bernadi (1952) and from two anonymous and undated articles, likely written by colonial administrators during the 1940s, found in the library of the Catholic Diocese of Kajiado.

Territorial Organization

The Maasai have long been divided into sections (*iloshon*, si=*olosh*), sometimes referred to as tribes or sub-tribes, each occupying a specified territory and having an autonomous political structure based on an age grade system. There are 12 sections of the Maasai (Figure 6). Table 2 below provides a self-explanatory schema of the different levels of territorial organization among the Maasai.

Table 2 : Maasai Socio-Political and Territorial Organization



Maasai Age Sets

The age set is a central institution in Maasai organization. It comprises initiates of the same period who have been integrated as a corporate group. Maasai conceive of their age system as passing through four stages of the male life cycle: boyhood (*ilaiyok*), warriorhood (*ilmurran*), elderhood (*ilmoruak*), and ancient elderhood (*ildasati*). Women are not grouped into corporate sets but are attached to male age sets by association. They tend to be identified with the male age sets with whom they danced as young, unmarried maidens; and later, through marriage, adopt the age sets of their husbands. Political action among the Maasai occurred and still occurs within the age set system under the leadership of men selected from the age set. Through membership in age sets, men participate in political affairs, cooperate in political action and individuals acquire political power and influence.

The progression of age sets through a fixed system of rank stages establishes a status hierarchy to which ideal modes of behavior and authority are related. Each age set

is senior to the next; the junior age set pays respect (*inkanyit*) to all groups senior to it and receives respect and deference from those junior to it. Relations between members of the same age set are cordial, cooperative and informal based on their status as coevals. However, the expected relations of deference and respect between adjacent age sets are complicated by rivalry and competition. Alternate age sets, united by the *ol piron* bond, share special relations of solidarity and mutual support.

In this cyclic system, changes of status entail changes in prestige and influence and hence in power and authority. An age set is at the lowest point of the power continuum at its first establishment, and reaches the apex at senior elderhood. The cross cutting nature of the age system unifies territorial and clan fragmentation.

Socio-Economic Development

About 92% of the district is classified as rangeland. It is dominated by pastoral economic activities. It also supports a significant portion of the country's wildlife population. The dominant livestock production units are individual and group ranches. Most group ranches range from 3000 hectares to 151,000 hectares in size, while individual³ ranches are on average 800 hectares. Figure 4 illustrates the distribution of group and individual ranches within the district.

The Maasai Group Ranches

The Maasai group ranches are the last of a series of state-driven land interventions in Maasailand that began in the early 20th century (See Table 3 below). The colonial administration's objectives of political control, revenue generation and economic development in first the East African Protectorate and later the Kenya Colony, were at the core of a series of land-based policy interventions that initially removed Maasai from their traditional territory to pave the way for European farmers. The Maasai were relegated to less productive reservations that comprised a fraction of their pre-colonial territory. Following this, in the middle of the 1900s, the colonial government, through a series of official commissions, legitimized "communal" land tenure among the Maasai

³ An individual ranch is a production enterprise in which an individual member of a 'tribal' society may, with community consent and the authorization of the local country council, legally register communal land as private property.

(and other indigenous groups). This tenure regime emphasized ethnicity and served to solidify the porous territorial boundaries between closely interacting ethnic groups. Later commissions sought to dismantle communal pastoral tenures and replace it with more individualized forms of land holding that were expected to be more efficient. The post-colonial administration in turn drew heavily from and gave expression to ideas and interventions crafted by its predecessor. Indeed it vigorously implemented a land adjudication and registration program in the mid-1960s that saw most of Kenya and parts of Maasailand individualized. In 1968 this independent Kenyan administration legislated into existence the Maasai group ranches.

Table 3 summarizes the objectives and outcomes of the series of land related reforms in Maasailand implemented by colonial and post-colonial Kenyan states. The outcome of these new institutional arrangements was an initial enclosure of Maasailand and a subsequent tendency to increased privatization of the Maasai range. This historical process has culminated in the recent subdivision and individualization of collective holdings, the subject of this discussion. The nature of institutional change, the historical interactions amongst diverse actors, and the outcomes in Maasai land relations are more carefully analyzed elsewhere (Mwangi 2003).

Group ranches were created with the expressed expectation that they would provide tenure security and create incentives for the Maasai to invest in range improvement and ultimately to reduce the tendency to over accumulate livestock (Republic of Kenya, 1974). The program entailed a shift in land tenure from one in which the range was under traditional common ownership, to one in which the land was subdivided into portions owned by groups, each of which held title to its group ranch. To implement this development program the Kenyan government sought loans and grants from international agencies such as World Bank, USAID, Swedish aid agency, Canadian development agency and the United Kingdom. The loans were granted under the auspices of the Kenya Livestock Development Program (KLDP).

Table 3 : Trajectory of Land Related Interventions in Maasailand

Instrument	Objective	Outcome
Maasai Treaties of 1904 & 1911 with the East African Protectorate.	Appropriation of Maasailand for the settlement of European farmers.	In 1904 Maasai were moved into North and South Reserves. All Maasai were moved and retained within the southern reserve in 1911. This resulted in the Creation of the 'white highlands.'
The Kenya Land Commission, 1932. Also called the Carter Commission after its chair, Sir Morris Carter.	Evaluating the land needs of Africans; Evaluating African land claims over land alienated to non-natives.	Communal rights created in African reserves, but colonial government expresses strong preference for movement to individual rights; Land alienated for white settlement not returned to Maasai; agricultural communities encouraged by colonial government to settle in Maasailand to help 'develop' Maasai land; Grazing schemes instituted by colonial government to encourage better land management amongst Maasai.
1940s	Second wave of appropriation of Maasai land for the creation of National Parks and Reserve for wildlife conservation	Land taken away from Maasai pastoralism, often dry season grazing areas such as the Amboseli swamps.
East African Royal Commission, 1952. Also called the Dow Commission after its chair.	Evaluate the outcomes of the Kenya Land Commission; To recommend modifications in tribal tenure necessary for the development of land.	Communal tenure in pastoral areas should be eliminated; Customary rights inefficient and should be replaced with individual tenure; Government policy to encourage individual tenure amongst Africans and to institute a system of registration of negotiable title.
The Swynnerton Plan, 1952.	Fast forwarding reform of traditional tenure and promoting commercialized production systems amongst Africans; Soothe escalating political tensions.	Land Adjudication and Registration programs and individualization of tenure in African reserves.
The Group (Land Representatives) Act, 1968.	Tenure security for the Maasai; Incentives for investment in commercialized systems of livestock production among the Maasai.	Legitimized the large scale transformation of rangelands into private property; offered rights to groups of individuals where such groups could show traditional claims to the land. Creation of a management committee with immense discretionary powers; Insecurity of tenure amongst ordinary Maasai;

		Subdivision of group ranches in the mid 1980s.
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The objectives of group ranches were to be achieved through:

- Registration of permanent members of each ranch who were thus to be excluded from other ranches;
- Allocation of grazing quotas to members to limit animal numbers and the carrying capacity of the ranches;
- Development of shared ranch infrastructure (such as water points, dips, stock handling facilities and fire breaks) using loans. Members would pay user fees and be collectively responsible for loan repayment.
- Members managing their own livestock and able to obtain loans for purchasing breeding stock and cattle for fattening.
- A group ranch committee elected to manage all group ranch affairs including:
 - Overseeing infrastructure development and loan repayments
 - Enforcing grazing quotas and grazing management
 - Maintaining the integrity of the group ranch boundary

Group ranches do not fall under corporate law in Kenya. A separate law, the Land Groups (Representatives) Act of 1968, was passed to provide a legal framework for ranch operation. This Act provides for greater simplicity, lower costs and lower tax rates in handling of group ranch affairs. The entire group holds the title to the ranch, which cannot be sold by any of its members. Each individual has residency rights, but the group as a corporate body controls the means of production i.e. grazing, water, and tillage and may establish mechanisms for the allocation of the means of production. This it does via the elected group ranch committee. The Department of Land Adjudication and the Registrar of Group Representatives, both in the Ministry of Lands and Settlement were extensively involved in the initial establishment of group ranches. The Range Management division of the Ministry of Agriculture played a key role in drawing up group ranch development plans. The Ministry of Water Development coordinated water development. The Agricultural Finance Corporation administered the loans provided by the funders.

For the Kenya Government, group ranching schemes were asserted to offer the most efficient means of utilizing development loan investments to bring pastoral regions into commercial production. Group-based schemes were expected to enjoy economies of scale. Also, capital costs per unit of ranch area were estimated to be only about one third of those for individual ranches (Grandin, 1986). Moreover development costs would be further reduced in group ranching schemes because ranches were already stocked by the members' privately owned cattle and there was no need to provide funds for ranch employees. The group ranch framework was expected to reflect existing patterns of socio-economic behavior in Maasai society to offer the possibility of developing pastoral lands without making pastoralists landless. This was a major concern since similar programs to individualize communal lands in the high potential Kikuyu areas resulted in landlessness and political unrest.

Many scholars agree that although the Maasai did not accept or even understand some features of the group ranch (such as grazing quotas, boundary maintenance and the management committee), the Maasai nevertheless accepted the idea of group ranches mainly because they needed to secure their land against incursion by government, by non-Maasai cultivators and by the elite Maasai (Grandin, 1986; Bekure et al, 1991; Galaty and Ole Munei, 1991). The history of Maasailand since the 1800s has been one of dispossession. European settlement took away areas such as Uasin Gishu, Nakuru and Nyandarua Districts, while District boundary changes transferred parts of Maasailand to Machakos, Nyeri and other areas (Kituyi, 1990). Population pressures in the mostly high potential areas resulted in infiltration into Maasailand (Fratkin, 1994). Because group ranches provided titles to land, they afforded the Maasai control over the land they have occupied since Kenya's independence in 1963. Group ranches also restricted the alienation of large tracts of better-watered land to the political elite. Many Maasai believed that if land were subdivided into individual units the resulting land size per family would be inadequate to support livestock pastoralism. Group ranch development additionally carried with it the promise of water development in the form of dams and boreholes, as well as the promise of improved livestock husbandry through introduction of dipping facilities and regular vaccination against prevalent animal diseases. The

Maasai accepted the group ranching scheme for these reasons, rather than for the development objectives stated by the Kenya government.

The group ranch concept is now close to its fourth decade, yet there is consensus among scholars and planners that this policy innovation is a dismal failure (Galaty and Ole Munei, 1999; Rutten, 1992; Munei, 1991). Not only has it failed to meet its stated objectives but it has also jeopardized the socio-economic welfare of the Maasai (Kipuri, 1989; Kituyi, 1990; Fratkin, 1994). There is a growing trend toward subdivision of group into individual ranches, and frequent sale of portions of individual holdings to prevent foreclosure on development loans (Galaty, 1988; Kimani and Pickard, 1998). This disintegration began as early as the mid-1970s for the Kaputiei ranches of northeastern Kajiado district. Demands for subdivision in other parts of the district gained momentum by the mid-1980s. By 1985, 22 group ranches had resolved to subdivide; 7 did so (Munei, 1987). By 1996, these 22 group ranches had actually subdivided and individual land titles begun to be issued (Kimani and Pickard, 1998). 11 other group ranches were in various stages of subdivision. By 2000, 31 group ranches had subdivided and been issued titles (Mwangi, 2003). 14 others resolved to subdivide and were being surveyed and demarcated. Only 12 had resisted subdivision. Figure 5 illustrates the current status of group ranch subdivision in Kajiado district.

The reasons why group ranch members have supported the subdivision of their collective holdings have been widely documented. Mwangi (2003), Galaty (1999, 1980), Kimani and Pickard (1998), Rutten (1992) and Grandin (1987) indicate that group ranch members anticipated that individual land titles obtained after subdividing the group ranches could be used as collateral against loans, which could then be invested on ranch development. A demonstration effect from the early individual ranchers, who had obtained loans from the Agricultural Finance Corporation and installed dips, water tanks, bought grade cattle, built permanent houses and bought cars, was instrumental in fuelling the desire.

Individual preferences for subdivision were also shaped by an increasing sense of uncertainty and dissatisfaction with the group ranch structure as a suitable mechanism of securing their land needs. Population increase within individual group ranches and the automatic registration of successive age sets increased the number of individuals entitled

to a share in a limited land resource (Galaty, 1999, 1994, 1993; Kimani and Pickard, 1998). This insecurity was heightened when outsiders or individuals with no legitimate claim to group ranch land were registered and allocated parcels (Galaty, 1992; Rutten, 1992). In some instances parts of group ranch land were carved out and issued as individual ranches to those with the ability to influence the management committee (Galaty, 1993). This last problem was particularly intense in Loodariak and Olchorro-Onyori group ranches in Keekonyokie section where officials from the Ministry of Lands and some of their spouses were allocated group ranch land (Ole Simel, 1999).

In the more arid areas of Loitokitok division in southern Kajiado district, where the Ilkisongo reside, demands for subdivision are closely tied to the development of commercialized agriculture (Southgate and Woodhouse, 2000; Woodhouse, 1997). The success of irrigated cultivation by Kikuyu and Kamba immigrants has led to increasing calls for the subdivision of the Kimana⁴ group ranch.

The most recent research on group ranch subdivision suggests that transformations are a defensive move in the wider history of Maasai land relations (Mwangi, 2003). In this process, Maasai are increasingly privatizing/individualizing their shared holdings as a defensive strategy against appropriation by the state, and from politically privileged individuals both within and without the Maasai community.

Thus there is a mix of motivations underlying individual decisions to support subdivision. But how has this process of subdivision played itself out? How were decisions made, and what were the outcomes? What were the decision rules and how did they affect outcomes? What was the role of different institutions, both 'formal' and customary in structuring the process, in creating accountability and in mediating conflict?

The Study Sites and Methods

Most studies on group ranch subdivision were conducted in the Keekonyokie and Kaputiei areas of northern and eastern Kajiado district, which are generally closer to Nairobi (Kenya's capital city), are ethnically diverse, and receive higher rainfall totals relative to other parts of the district. These areas represent 8% of the district. Few studies

⁴ Kimana group ranch has made a conscious decision to restrict subdivision to those areas of the group ranch where such cultivation is possible.

have been conducted in the more arid areas that are more representative of the district. The results of these studies suggest that closeness to major cities and towns, high populations of immigrant cultivating communities, and high agricultural potential are important conditions for the drive towards subdivision and increased privatization in Kajiado district. The sites selected for this study are an attempt to represent conditions different from those in the above-mentioned cases, i.e. conditions that are reflective of most of the district.

The four study sites were selected from one ecological zone, where the conditions of soils, vegetation, geology and rainfall, as well as ethnic composition, are relatively homogeneous. Four group ranches were selected: Enkaroni group ranch area, Meto group ranch area, Nentanai group ranch area, and Torosei group ranch (Figure 7). These were selected to include variations in size and location, in proximity to main the main livestock marketing center of Bissel, and in how far along each was in the subdivision process (See Table 4 below). Nentanai is the smallest group ranch, both in terms of size and membership, while Torosei is the largest. Enkaroni and Meto are intermediate in both regards. Bissel, the main livestock marketing center that serves these four areas, was selected as a reference point (Zaal,1999). Enkaroni is only about 8Km away from Bissel and Nentanai 18 Km, while Meto and Torosei are 65 Km and 56 Km away, respectively, each sharing a border with Tanzania. Meto and Torosei are neighboring group ranches that are on different ends of the subdivision continuum. Meto, being the first to begin issuing titles to members, is the most advanced while Torosei has not been formally surveyed and thus no titles issued. Nentanai only began to issue titles in May of 2001.

Table 4: Basic Information for Enkaroni, Meto, Nentanai and Torosei

	Meaning	Year GR Incorporated	Size (ha)	Members	Agreed to Subdivide	Titles Issued by Oct 2002	Distance from Bissel (Km)
Enkaroni	Place with no water.	April 1975	11,378	356	May 1988	310	8 (5miles)
Meto	River originating from Tanzania.	December 1977	28,928	645	Sept 1989	400	65 (40)
Nentanai	River. Also was	December 1977	3696	57	March 1987	42	18 (11)

	warrior village for Ilmatapato warriors.						
Torosei	River flowing between gorges called Torosoit.	June 1977	45,44	300	Sept 1989	-	56 (35)

Fieldwork was conducted from January 2001 to January 2002 and from June to August of 2002. The first part of the 2001 fieldwork was focused on interviews designed to find out why individuals supported subdivision, whether they participated in the decision to subdivide, how parcel sizes and locations were determined and distributed, whether dissatisfied individuals contested committee allocations, how they organized such contestation and with what success. 334 interviews were conducted across elders, youths, married women and widows for all four study sites. Table 5 and 6 illustrates the proportion of general membership interviewed in each group ranch.

Table 5: Proportion of group ranch members that were interviewed

	No. of Members	No. of Members Interviewed	% Interviewed
Enkaroni	356	48	13
Meto	645	88	14
Nentanai	57	30	53
Torosei	300	64	21

Table 6: Interviews by age set and gender

	Ilterito	Ilnyankusi	Iseuri	Ilkiseyia	Irang - Irang	Ilkingonde Ilkishili	Ilmajeshi	Ilkilaku Itakeri	Widows	Married women
Enkaroni		4	11	20	8	12	2	1	3	17
Meto	1	6	17	22	13	22	-	1	15	12
Nentanai		5	10	6	4	1	-	-	6	6
Torosei		1	16	13	12	33	11	1	4	15
Total (334)	1	16	54	61	36	68	13	3	28	50
% of Total	0.30	4.79	16.17	18.26	10.78	20.36	3.89	0.90	8.38	14.97

Interviews were supplemented with archival material. Newspaper articles from 1968 (when group ranches were created) forward were perused to capture local and national debates on land related issues. Similarly Group Ranch files (both meetings and disputes files) were obtained from Kajiado District's Land Adjudication Department. Meetings files recorded minutes of group ranch Annual General Meetings, changes in

membership, changes in committees, minutes of committee meetings, communications from the Registrar of group ranches and from the Land Control Board. The disputes files held correspondence relating to group ranch boundary disputes, individual and group complaints over the conduct of subdivision, and minutes of arbitration meetings conducted under the umbrella of the District Commissioner's office. The archival search helped provide insights into the process of subdivision, to identify key actors and the controversies surrounding the process of subdivision and in particular to identify the roles of the different arms of government administration in the process. Knowledge and information from this archival search fed into the questionnaire surveys, as new information was gleaned from either source and to cross check the validity of information from respondents.

Analysis of interview data is largely qualitative and interpretive. The choice of qualitative method was guided by the nature of the problem, which is an attempt to understand a profound and puzzling phenomenon that represents a significant break away from established Maasai cultural practice. Obtaining details about opinions, events and experiences of individuals and groups during the process of group ranch subdivision seems most meaningfully addressed through description of preferences, of actions and interactions.

Subdividing the Group Ranch: Decisions and Procedures

Although the four group ranches resolved to subdivide their collective holdings at separate times they adopted similar decision rules for the conduct of subdivision. Table 7 illustrates steps in group ranch subdivision.

First, members resolved that subdivision be conducted to ensure that all parcels were equal in size except where land was distinctly marginal such as on hills on near stream beds, or for exceptionally large families in which case larger parcels would be issued⁵. This allocation formula draws from the Group (Land Representatives) Act, which specifies that group ranch land is the property of the registered collectivity, held by

⁵ Lands on hills highly erodible. Similarly the streams, which are seasonal, are susceptible to flooding during the rainy season. The force of the water create gullies in land surrounding such streams. Hills and streams consequently not considered as desirable parcel locations.

each member in *equal, undivided* shares. It also draws from shared customary understandings, which consider land an indivisible territory to which all recognized users have equal access.

Second, though the officially elected committee would oversee the process of subdividing the group ranches and allocating parcels to individual members, each group ranch selected an additional group of up to ten individuals to assist the official committee in the physical task of demarcating the group ranch. This demarcation committee lasted only for as long as it took to physically mark parcel boundaries.

Third, the group ranch members were required to apply verbally or in writing to the official committee for the areas in which they preferred to have their parcels located. However there seemed to have been no negotiations on what criteria would be used to determine who received what parcel where. Also no discussions on how conflicting preferences would be reconciled.

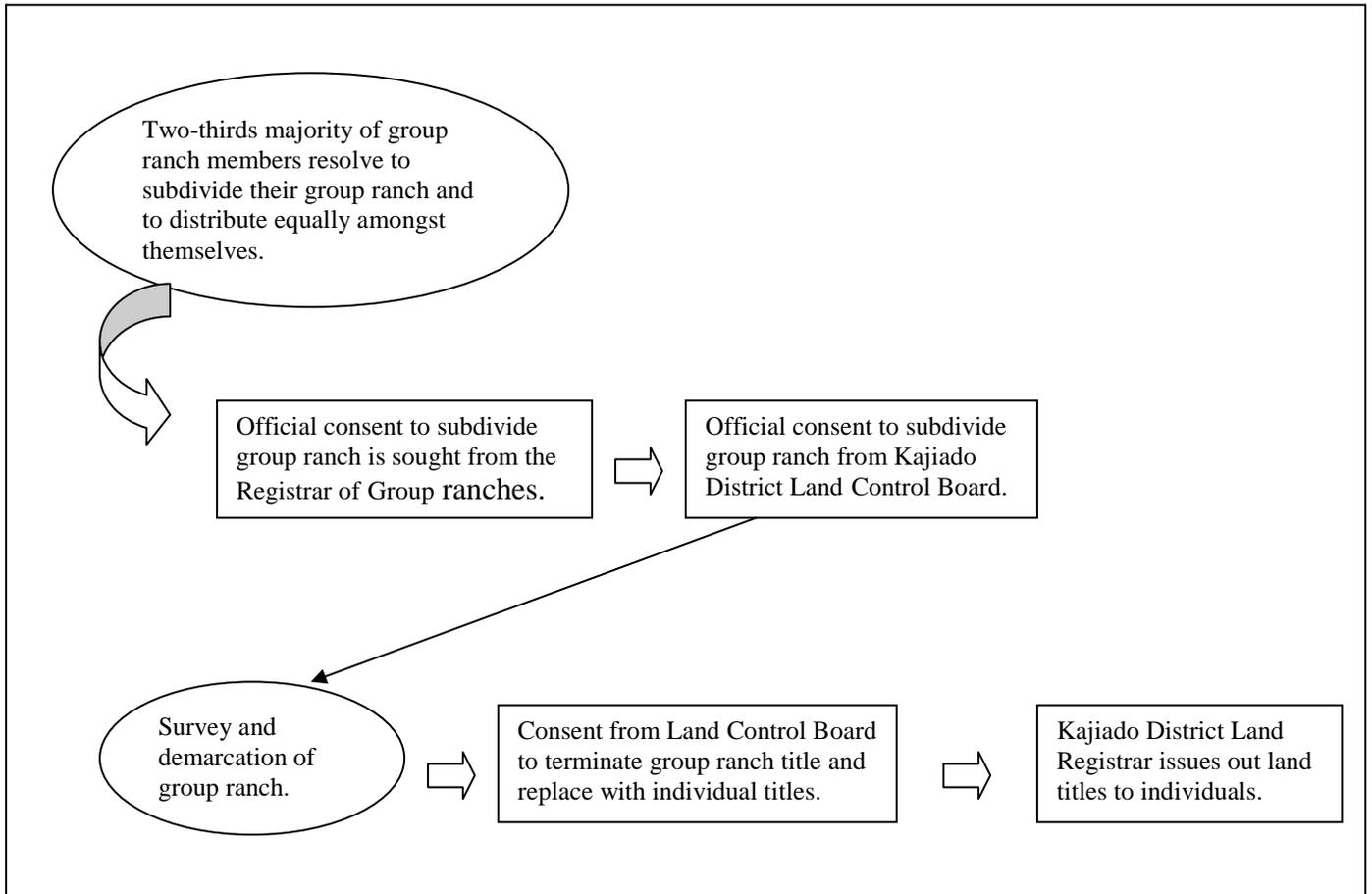
Fourth, members resolved to remain at their current locations until completion of subdivision to safeguard against opportunistic relocation to choice areas prior to subdivision. No member was to fence off any part of the land, not even for their private *olopololis* i.e., an exclusive zone of land close to each homestead for the grazing of young and/or sick livestock. There would be no land sales prior to the acquisition of titles.

In accordance with the Land Act, the annual general meeting where group members voted to subdivide their group ranch was presided over by the Registrar of group ranches or his representative. At each of these meetings and after the majority decision to subdivide, the Registrar would outline the government's procedure for dissolution and subdivision⁶. First, the official committee on behalf of the group ranch was required to make a formal application for the dissolution of their group ranch to the Registrar of group ranches. This application include a KShs 100 (about \$1.2) processing fee and the minutes of the annual general meeting at which the majority of the members voted to dissolve their group ranch.

⁶ Although the group ranch is technically dissolved, the committee stays in force, it is not disbanded. Dissolution is only to get the subdivision process going. Committee will only be disbanded after subdivision has been finalized and all registered members have received their land titles.

Second, after verifying that the group ranch title is not charged or borrowed against, the Registrar would consent to its subdivision thereby releasing the group ranch to begin survey and demarcation.

Table 7: Steps in the subdivision of group ranches



Third, the group ranch seeking to subdivide would apply to the district’s Land Control Board for further consent to subdivide. The land control board, comprising between 8-12 individuals, is appointed by the Provincial Commissioner and gazetted by the Minister of Lands. The District Commissioner, who is also the head of government administration in the district, chairs it. The secretary of the board is the district representative of the National Commissioner of Lands. Other technical individuals include the District Land Adjudication Officer, the District Land Registrar and a representative from the local authority, the Kajiado County Council. Landowners in the

district must comprise three-quarters of the board and to include both men and women from the community.

During this stage of the subdivision process the Land Control Board has several responsibilities. It verifies and confirms whether or not the group ranch title deed is encumbered by loans; it seeks to establish the size of the land to be subdivided and the reasons for its proposed subdivision; it seeks to know the number of parcels that will result from subdivision of the land and whether/which public utilities will be set aside from the land. If satisfied, the board awards its consent for the group ranch to undertake subdivision.

Fourth, after the group ranch has completed demarcation, survey and mapping, it must seek consent from the Land Control Board so that the collective group ranch title can be discontinued and converted to a series of individual titles by the District Land Registrar. At this point the land control board's duty is to confirm that all registered group members have been allocated parcels that are relatively equal. It does this by perusing the area list that contains the names of registered members, their parcel numbers, and the size of parcel that each will receive. The board also must determine that there is no dispute over the subdivision. It consults landowner representatives on the board and is open to disputing parties. The board must verify the surveyor's site map that public utility areas such as schools, trading centers, water points, health centers, and access roads have been set aside. In all decisions the board depends on technical experts such as the District Surveyor and the District Land Adjudication Officer. If satisfied, the board consents to the transfer of title from the collective to the individuals and the district land registrar can process land titles.

Group representatives, usually the committee chair, vice-chair and secretary sign the title transfers to individual members once each has paid the necessary processing fees. The District Land registrar will witness this transfer process. Once all titles have been transferred, and every member has obtained title, a meeting will be convened and the Registrar of Group Ranches will officially dissolve the incorporated group and its representatives.

The group ranches also had an equally exhaustive procedure for on ground demarcation. After receiving the consent to subdivide, the group ranch would engage a

certified surveyor, either government or private, to conduct the on-ground demarcation. Prior to this formal survey, the official committee and the temporary demarcation committee would traverse the entire group ranch, marking out individual parcel boundaries using natural features such as trees, rivers, rocks and hills as markers. The surveyors would then formalize and/or rectify these boundaries. Individuals were expected to pay surveyor fees as a precondition to being shown their parcels. The fees varied from 1500 KShs (i.e. about \$19), in Enkaroni, which was surveyed by a government surveyor; to 4500Ksh in Meto and 5000KSh in Nentanai both of which were surveyed by private surveyors⁷. The committee and the surveyor determined survey fees. After the official survey and mapping, the committee would then show those group ranch members that had paid survey fees the location of their parcels. Individuals would then seek their titles, at cost, from the District Land Registrar.

Why Did Group Ranch Members Expect the Group Ranch Management Committee to Subdivide the Group Ranch Equally?

Before discussing the outcomes of the subdivision it is important to reflect on why individuals, the group ranch members, expected the committee to safeguard their interests. This is puzzling because members endorsed the process before obtaining clear information and/or guarantees on the attributes of land that would be allocated to them. They also did not place restrictions on the bounds of committee action nor determine ways of bringing the committee to account in case it failed to fulfill their expectations. This is a significant omission because individuals' livelihoods and the viability of the livestock enterprise, both of which are dependent on access to adequate land resources, were at stake. Some insights can be gained from examining the criteria that members used to elect the official committee and later the demarcation committee.

⁷ Torosei has not yet engaged a surveyor—persistent droughts and heavy cattle losses have made it difficult for members to raise survey fees. The committee in Torosei is now approaching one wealthy Kajiado business man, who also owns land in Torosei to loan them an initial amount that would get the surveyor started on the ground. Nentanai members also had a problem raising survey and even title fees. The committee here received a loan from a neighboring cement manufacturer to get the survey process going. Those who could not afford to repay the loan were paid for by their friends and families in return for allowing the lender free grazing until the full amount is recovered. Some however opted to sell part or all of their land to those who paid the fees for them.

Selecting the Committees

The Land Act requires that group ranch members elect a management committee annually. Group members prized personal qualities such as honesty, integrity, and sense of justice/fairness, industry, good behavior and oratory skills. Some individuals elected to the committee were drawn from the traditional leadership structure and were age set leaders (*ilaiguenani*) or deputies to age set leaders (*inkopirr*). Others were chosen because they were educated and had record-keeping skills which were considered critical for the group ranches' external relations with government and with financiers. This was usually the case for the positions of secretary and treasurer. Group ranch management committees were thus a unique blend of traditional/customary authority and formal legal authority given force by the Land Act.

Prior to the actual on-the-ground subdivision, each of the group ranches selected yet another group of ten to twelve individuals, the demarcation committee, to assist the official management committee in the physical task of subdivision. The demarcation committee, which lasted only for as long as it took to physically demarcate boundary parcels, was selected using similar criteria to that of the official committee. Personal integrity, fairness, industry were valued attributes. To these attributes were added other practical considerations such as achieving adequate clan and age set balance across both committees as well as ensuring that all the settlement regions within each group ranch were represented. Many individuals regarded the demarcation committee as an avenue to guard against any biases the management committee might have during subdivision.⁸

Group ranch members put considerable thought into the selection of their leaders. Though the management committee had been elected earlier, they had attributes that would engender confidence in their leadership and ability to conduct subdivision according to agreed procedures. The management committees (with the exception of Nentanai) initiated, supervised and maintained infrastructure projects within their respective group ranches. Seasonal water pans (also referred to as dams), boreholes, and cattle dips were installed during their tenure of office. In the demarcation committee there was a special attempt to ensure that the outcome of subdividing the group ranch tallied with expectations. By ensuring diverse and crucial forms of representation, between age

⁸ Interviews: TORO/2/2002; TORO/9/2002; MET/7/2002; MET/12/2002

sets, between clans, and with a strong regard for settlement patterns, group ranch members made an effort to bridge the gap between their expectations of the process and the outcomes of the process. Arguably, the considerations by which individuals were chosen to the two committees amount to a vetting procedure, which when combined with the bureaucratic controls of the district's Land Control Board, theoretically provide for a sound way of reducing uncertainty and assuring confidence that outcomes would indeed meet individuals' expectations. Rational individuals, to the extent possible, established a system that was based on traditional norms, and on past experience, that was anticipated to induce a measure of accountability amongst those entrusted with the responsibility of subdividing their land. The results were not consistent with the expectations.

The Subdivided Group Ranch: "Fingers on the Hand Are Not Equal"

Location of parcels

Although individuals applied for their desired locations, few were allocated parcels where requested. Some individuals were even relocated from prime sites close to water, transportation, and schools or with favorable pastures, to remote and unfavorable sites. Many such persons either had personal conflicts with committee members or had come in conflict with the committee during the subdivision. Individuals who were friendly to the committee, or that comprised family to committee members were allegedly issued the areas of their choice. The committee members awarded themselves prime land. Some individuals in Meto claimed that the opportunity to choose was not afforded to all, but rather to the wealthy and to the friends and family of committee members.

The committee on the other hand, made contrasting claims. The Enkaroni group ranch committee, for example, claimed that it took into consideration the length of residence at a site when allocating land parcels. An individual who had lived in one locality for a long period of time without relocating would be allocated the spot that he wished. But this decision rule, according to committee members, was complicated by the fact that settlement in the group ranch was collective, it was thus not uncommon for several individuals to apply to be located at the same site or locality. Where several applicants applied for the same locality, the committee supplemented the extended

residency rule with a first-come-first-served rule. If all applicants insisted on being located at the site the committee allowed it but would then issue them smaller parcels. Those that agreed to move to alternative locations were given a larger share wherever they were moved to.

Discussion with the Meto committee seems to suggest that in addition to the length of residence at a site, the level of investments undertaken was also an important determinant. An individual who had invested in ‘development’ such as wells, dams, or other watering facility would be given greater priority. More senior age sets such as the retired elders were also given first preference⁹, while widows had to be placed close to their “guardians”. Beyond these criteria, some individuals who had the foresight to realize that not all could be accommodated in their areas of choice selected alternative sites, which they were given. Those who insisted on being located at the site they requested, even when the demand was high, were moved elsewhere while those not in the group ranch during subdivision were relegated to less desirable locations.

In Meto the requirement that individuals pay “clearance” fees before being shown their parcels served to disadvantage those unable to raise the fee. Clearance fees were payments to cover the costs of survey. Those able to pay clearance fees were given prime locations often displacing those originally resident there prior to subdivision¹⁰. It is alleged that the committee in Meto transferred the land parcels of those that could not afford to pay title-processing fees to others who were able to pay¹¹. This means that though an individual may have paid his clearance/survey fees and been shown the location of his parcel, the committee could still overturn this earlier decision and re-issue the land to someone else who was able to raise land title fees.

Parcel Sizes

Table 8 below provides a synopsis of the parcel sizes and their distribution among group ranch members following subdivision.

⁹ Interviews: MET/21/2001, MET/68/2001

¹⁰ Interviews: MET/19/2001, MET/48/2001

¹¹ Interviews: MET/51/2001

Table 8: Summary of Parcel Sizes in Enkaroni, Meto and Nentanai

	Enkaroni	Meto	Nentanai
Area (ha)	11802.5	27358.02	4038.48
No. of Members	332	548	56
Average parcel size after subdivision	35.56	49.92	72.12
Largest Parcel (ha)	200.5	152.79	214
Smallest Parcel (ha)	3.6	4.27	14.21
Standard Deviation	27.23	21.87	51.06
Other Info:	64% of members have less than average parcel size. 25% of former group ranch land is now owned by 9% of the former members. 13 individuals with single digit parcels. Committee members (i.e. 10 individuals) own 9% of former group ranch land. Committee average= 100ha.	60% of members have less than average parcel size. 35% of former group ranch land is now owned by 9% of the former members. 1 individual with single digit parcel. Committee members (i.e. 10 individuals) own 4% of former group ranch land. Committee average= 113ha.	63% of members have less than average parcel size. 26% of former group ranch land is now owned by 9% of the former members. Committee members (i.e. 10 individuals) own 30% of former group ranch land. Committee average= 133ha.

The results¹² indicate that contrary to members' expectations the subdivision did not result in equal parcels. In all three group ranches where subdivision was completed and formalized via surveying, mapping, and the issuance of land titles (i.e. in Enkaroni, Meto and Nentanai) two-thirds or more of the registered members have parcel sizes that fall below the averages. More than 25% of former group ranch land is owned by 9% of its registered members. Moreover, committee members who spearheaded the subdivision exercise and who were expected to conduct the subdivision fairly, ended up owning between 25-35% of the land that they were entrusted to subdivide. The average sizes of committee members' parcels following subdivision were 100 ha for Enkaroni (as compared to an Enkaroni average of 36 ha), 113 ha for Meto (as compared to a Meto average of 50 ha) and 133 ha for Nentanai (as compared to a 72 ha average for Nentanai). Committee parcels were thus more than twice the average size of ordinary members' parcels.

¹² Torosei not included because they have not formally subdivided thus parcel sizes are not confirmed.

In the group ranches studied, committee members began by allocating themselves large parcels. Then individuals with close ties and affinities to committee members were rewarded with large parcels. Wealthy individuals with large herds were also allocated large parcels. They were able to adequately entertain the committee by slaughtering cows and giving them gifts of livestock¹³. They successfully negotiated their preferred parcel sizes. Those who could not ‘entertain’ the committee, notably the poor livestock herders, did not succeed in negotiating a preferred parcel size and ended with considerably smaller sized parcels. Widows too received small parcels, as they were unable to defend their claims¹⁴. Those with disagreements, personal or political, with the committee had no space to negotiate—they were punished with smaller sized parcels.

The committee kept those with large parcels well informed about the process, such that when subdivision was technically over, and land titles released by the registrar of lands in Kajiado district, they hurriedly obtained their title deeds, long before the committee announced to the general membership that titles were ready to be collected¹⁵.

The secretary of Meto group ranch explained that his committee allocated itself large parcels in order to compensate themselves for the tedious work of subdividing the group ranch.¹⁶ He also contended that those whose whereabouts were unknown, though their names appeared on the register, were given small parcels.

Group ranch members’ demands for equal allocation and their concerns over the unequal outcomes of land distribution need to be better understood because it raises important questions of equity that must be interpreted both within the material realities of the past and present, and in the context of Maasai culture. Obviously the outcome of subdivision has favored the wealthy cattle owners and the committee. A simple Pearson’s product moment correlation between land allocated after subdivision and livestock holdings suggests that both size of parcel and livestock¹⁷ holdings vary positively

¹³ Interviews: ENK/70/2001, ENK/8/2001

¹⁴ Out of the 17 widows that were allocated land in Enkaroni, 12 have land below the group ranch average. Committee were hesitant to even issue land to widows because of the fear that in case the widow were to remarry their land would be lost to the deceased’s family. This fear was more acute in the event that the widow was re-married to an ‘outsider.’

¹⁵ Interview: ENK/19/2001

¹⁶ Interview: MET/21/2001

¹⁷ The size and distribution of holdings was derived directly by asking the interviewee. These have not been verified by direct census and must be treated with caution as it is fairly uncommon for the Maasai to reveal their true wealth.

together in Enkaroni, Meto and Nentanai (Table 9). For cows, in particular, the association is always significant and relatively strong. Goats and sheep are significant only in Nentanai.

Table 9: Correlations between Land and Livestock

	Cows	Goats	Sheep
Enkaroni			
Pearson correlation	.354*	.074	.200
Sig. (2-tailed)	.023	.645	.216
N	41	41	40
Meto			
Pearson correlation	.568**	.170	.194
Sig. (2-tailed)	.000	.175	.122
N	65	65	65
Nentanai			
Pearson correlation	.583**	.578**	.515*
Sig. (2-tailed)	.003	.004	.012
N	23	23	23

*correlation is significant at the 0.05 level (2-tailed).

**correlation is significant at the 0.01 level (2-tailed).

While it may be difficult to evaluate just how much of the committee's proportional allocation, which disregarded members' demands for equal subdivision, was driven by their own views of equity or just due to a lack of transparency, it might be worth pointing out that group ranch members' demands for equal allocation and distribution of land occurs against the backdrop of severe inequalities between families/households' livestock wealth. So why would they demand for an equal allocation? Why would they be surprised and discontented with the outcome of subdivision?

Inequalities in livestock holdings amongst Maasai are not a new phenomenon (Waller, 1999; Bekure and Grandin, 1991; Bill and Anderson, 1980; Jahnke et al., 1972). But today's circumstance is radically different from that which prevailed in the colonial or pre-colonial times, or possibly even during the phase of group ranching. In prior times, though livestock holdings were unequal, and though there was competition for prime grazing land and water among individuals, the base factor of production, land, was available and accessible to *all* Maasai as a birthright.

Though individual herds varied according to stochastic events such as drought, epidemics and raiding, and according to livestock management skills, there seemed to be

an *equality of opportunity* (Waller, personal communication, 1999; Halderman, 1989). Land resources were available to all and the extent of livestock mobility determined access. Each person would manage his herds on commonly accessible land within the constraints imposed by stochastic events and labor availability. There was fluidity in livestock holdings among rich and poor herders alike. But with time, as significant portions of Maasailand were appropriated at different times by different actors for different reasons (see Mwangi, 2003; Campbell, 1993; Rutten, 1995, 1992; Halderman, 1989), land became a scarce resource assuming an ever more critical role in the Maasai livestock economy.

The skewed allocation of large portions of land shifts the production opportunities in favor of the already wealthy herd owners. Because significantly less land is available to the livestock poor herders, and their mobility increasingly restricted, the viability of the livestock enterprise for them is seriously undermined. Where previously an individual may have had a fair chance of rapidly accumulating or losing herds on an available land base, currently an individual's ability to accumulate is strongly limited by the availability of land. Those with small herds and small parcels but without alternative modes of livelihoods outside pastoral subsistence are evidently disadvantaged. It is not surprising that individuals would raise bitter objections against the distribution of land following subdivision. Not only does it strip them of birthrights but it undermines the basis of their livelihoods in a marginal environment where alternatives are severely limited.

“Malalamiko ya Beacon”: Contesting Outcomes

In Enkaroni, those who were outraged with the outcome of subdivision organized to challenge the committee's allocations. Included in this group were widows who had not been allocated their deceased husbands' parcels, as well as individuals that, though registered members, found themselves without land. This group of about 50 was referred to as the '*kikundi cha malalamiko ya beacon*' or beacon complainants group. When they approached the committee to re-negotiate parcel size; they were told that 'the fingers on one hand are not equal'; so how then did they expect everyone to get equal sized parcels? The committee was not ready to discuss the complaints of unequal sized parcels.

However they located legitimate members who had missed out in the allocation process¹⁸.

Faced with the committee's intransigence, the complainants' group then approached the elders and asked them to appeal to the committee over the unequal allocations. The elders' *barazas* or public meetings were unfruitful. The elders had vested interests in the outcome of such deliberations. More importantly, they would not have had sufficient powers to overwrite committee decisions. The group of complainants did not seek audience with the local chief and the local politicians, as they too were beneficiaries of the process.

They then took their case to officials in the Department of Lands Adjudication and Settlement. But the Department adopted an attitude of non-interference in matters of group ranch subdivision. The District Land Adjudication Officer had on two prior occasions stated that the determination of parcel sizes depended entirely on the group ranch and that complaints be directed to the committee and not to his office because 'all facts related to cases are present in Enkaroni.'¹⁹ The District Officer of Kajiado Central Division reiterated this position. During a closed meeting on 23rd March 1992 between the District Officer, group ranch officials, the land adjudication officer, the chief of Matapato (i.e., neighboring Lorngosua group ranch) and five complainants, all other complaints, that had to do with boundary disputes and irregular routing of cattle tracks, were solved except for the complaints on 'small land parcels', which the District referred back to the group ranch committee²⁰.

Range planners in the then Ministry of Livestock and Water Development, unlike Land Adjudication officers, were less distanced from members' concerns. Faced with complaints on parcel sizes, they would periodically evaluate of site viability and where necessary, urge committee members to reconsider their allocations.

Many individuals believed that their appeals to government officials went unheeded because of bribery. One letter of 19th February 1990 from a widow to the district

¹⁸ It is claimed that in order to settle the ones that had been unwittingly missed out the committee members had to give out parts of their huge chunks to accommodate those that had been overlooked during land allocation.

¹⁹ Minutes, Enkaroni Annual General Meeting, 10th July 1991. Meetings File, Enkaroni Group Ranch. Department of Land Adjudication, Kajiado District

²⁰ Minutes, Complainants Meeting, 25th March 1992. Disputes File, Enkaroni Group Ranch. Department of Land Adjudication, Kajiado District.

commissioner is instructive. Not only does she complain of exceedingly small parcel size (her 15 hectares as compared to committee members' average of 300 acres), but cites that 'government officers are corrupt and take bribes.'²¹ She also accused the committee of corruption and misuse of powers; she personally witnessed a day when the group ranches chairman 'commanded an old man to kneel down and worship him, buy some beer for him and slaughter a fat he-goat so that he would give him a reasonable *shamba*.' Another letter dated 16th March 1990 addressed to the District officer, Land Adjudication officer, District Range officer and District Surveyor, complained of a 'further subdivision of his land' following his complaints to the location chief²².

Evidence of members' dissatisfaction comes from a letter dated 9th February, 1990 written jointly by an unidentified number of members, which was addressed to the district range officer with copies to the District Commissioner, District Officer of Central Division, Member of Parliament of Kajiado central, the location Councilor, District Land Adjudication officer and the Chief of Enkaroni location. In this letter the members cited their complaints, quoted directly, as²³:

1. People in leadership i.e. committee and chiefs have allocated themselves huge chunks of land;
2. *committee have failed to subdivide the ranch in an equitable manner;*
3. close friends, relatives and in-laws of the committee are given bigger portions of land;
4. committee never ready to listen to members' complaints (heavy-handedness);
5. *Chiefs are blocking people from going for further measures (i.e seeking redress at alternative fora);*
6. *the chairman is demanding that those with personal differences with him must kneel down and beg for mercy;*
7. there is bribing;

²¹ Letter written by Nenkitai ene Lolkinyei, 19th February 1990. Disputes File, Enkaroni Group Ranch. Department of Land Adjudication, Kajiado District

²² Letter written by Pushati ole Leshinka, 16th March 1990. Disputes File, Enkaroni Group Ranch. Department of Land Adjudication, Kajiado District

²³ Unnamed author, 9th February 1990. Disputes File, Enkaroni Group Ranch. Department of Land Adjudication, Kajiado District.

8. some members are allowed to participate in committees' private meetings; others are not;
9. some unregistered people have been given ranches by the committee without members' knowledge.

It seems that there may have been a general meeting to discuss the allegations raised above because two years later the district land adjudication and settlement officer (DLASO) reminded the group ranch chairman that group ranch members had agreed to the 'adjustment of land parcels' for a group of 8 named individuals in a resolution that was reached at an Annual General Meeting on 27th August, 1990²⁴. The records did not hold a reply to this communication and evidently the resolution was not implemented as subsequent events reveal. The minutes of 27th August 1990 did not at any point mention the adjustment of parcel sizes. It is however clear that that meeting resolved mentioned cases and at the conclusion of the meeting the group members requested the DLASO to send a team of surveyors to the group for the purpose of final subdivision and to erect beacons 'now that the complaints were over.' The DLASO agreed. It is curious that these minutes failed to capture the consensus on adjusting parcel sizes.

The group of complainants appealed to the court as a final recourse to justice. On 21st May 1990 a lawyer, writing on their behalf to the group ranch chairman, cited that his clients had been allocated small pieces of land while some other group members had been allocated large chunks of land. The lawyer said that unless the chairman confirmed that their clients' complaints would be investigated within fourteen days from the receipt of his letter his clients would apply to the High Court for an injunction to terminate subdivision. In a rejoinder, dated 24th May, 1990, the group ranch chairman acknowledged that complaints of unequal subdivision had been brought to his attention and to that of administrative authorities, but that he and his committee were 'unaware of your clients discontent.'

The chairman suggested that:

1. Clients bring specific grievances/complaints to the committee

²⁴ Letter of 15th April 1992. Disputes File, Enkaroni Group Ranch. Department of Land Adjudication, Kajiado District

2. Failing 1 above to notify DC (District Commissioner) through area chiefs and local DO (District Officer)
3. Revert to you and to communicate to us on your views

‘In the case of a complete collapse of arbitration, the option of the court remains.’

From the previous accounts it is clear that the complainants had followed the channel suggested by the committee, and quite obviously had failed. Six members from this group did eventually launch their case in the High Court against the group ranch committee who are the legal representatives of Enkaroni group ranch²⁵. The plaintiffs’ demands were as follows:

1. Land be allocated equally among all its members.
2. Land subdivision carried out on group ranch be declared null and void
3. Subdivision should be halted until suit is heard
4. That the group committee is subdividing land in a discriminatory manner.
5. Plaintiffs had been allocated small land parcels while other members had been allocated large parcels of land.

A ruling by High Court justice Akilano Akiwumi dismissed, with cost, the plaintiffs’ application for an injunction²⁶. The justice ruled that:

1. The plaintiffs should show, *prima facie*, why it is wrong that they have been allocated smaller land parcels than others. The burden is on the plaintiffs to show that the discriminatory subdivision is for some cogent reason for instance, wrong, unlawful, or contrary to the objections of the defendant. This has not been shown.
2. The annexure to the affidavit of the plaintiff seem to show that it is rather the DLASO, the survey officer and the local chief who might be accused, if anything of unfair distribution of land, if it is so.
3. The plaintiff must show beyond mere allegation that they have been given smaller portions of land than those given to others. What are the actual sizes of the portions of land involved? There is no evidence on this.

²⁵ Plaintiff, Civil Suit 3956 of 1992, 22nd July 1992. High Court of Kenya.

²⁶ Ruling, Civil Case 3956 of 1992. 31st July 1992. High Court of Kenya.

4. The plaintiffs have not made out a *prima facie* case with a probability of success. They have shown no reason to support their allegation of discriminatory subdivision and why they should not have been allocated what they were given.
5. Plaintiffs' application for injunction dismissed with cost.

Following this defeat, which represented their final recourse to justice, the complainants conceded defeat. They did not re-organize to appeal the High Court's ruling. They realized no help was forthcoming. Their advocate advised them to give up the case because 'everybody was against them including the registrar of the High Court who is a member of Enkaroni and whose *shamba* is among the big ones.'²⁷

During this contest the committee resorted to creating divisions within the complainants group. It began by threatening to withdraw land that had already been allocated to the complainants and their supporters, or to reduce further the size of parcels allocated to them. The committee also allegedly secretly increased the parcel sizes of some selected individuals, presumably the most vocal ones. These selective allocations eroded group cohesion and resulted in a systematic decline of the complainants' group size from about fifty individuals to about six individuals. This group of six is the one that eventually launched an appeal to the courts.

In Meto, individuals dissatisfied with their parcel sizes complained individually. The committee was unresponsive. The committee argued that because many people were complaining about their parcel sizes, nothing could be done about it. Some individuals chose not to confront the committee because they found others with even smaller parcels, and felt they were better off not to complain. Those who confronted the committee were threatened that their parcels would be withdrawn and instead given to other more deserving parties, or that their parcels would be further reduced. Others were asked to identify whose land would be reduced in order to cater for the increase of their parcels. Yet still others were told that parcel sizes couldn't be equal as the attributes of land vary from one place to another. The Meto group ranch committee also reminded group ranch members that by raising objections subdivision might be suspended as in several

²⁷ Interview: ENK/10/2002

neighboring group ranches. Meto group ranch is located adjacent to Ilpartimaru and Lornng'osua group ranches, both of which began their subdivision earlier. Longstanding conflict over distribution prevented subdivision in these two group ranches from advancing. Organizing to contest committee decisions was a big challenge in Meto, not only because of committee intimidation but also because it is a large group ranch over which people are thinly scattered. A few individuals were also away.

In Nentanai individuals did not contest their committees' unequal allocation. Nentanai is also a neighbor to Ilpartimaru group ranch, and people here claimed that they learnt from their neighbors how expensive and destructive it was to derail the process of subdivision. During fieldwork I found that many residents of Ilpartimaru had sought refuge with relatives and friends in Nentanai to escape the escalating conflict in their own group ranch. In any case, even if discontented individuals wanted to organize, it would have been challenging. Many of those affected the most were very poor and did not even reside in the group ranch itself but had moved to urban areas where they were pursuing alternative livelihoods.

Discussion

Subdividing a total of about 90,000 hectares of variously endowed group ranch land among 1,400 registered members by about 40-80 committee members of the respective group ranches of Enkaroni, Meto, Nentanai and Torosei is difficult. The committee faced serious challenges such as the terrain, members' unwillingness to move when relocated, boundary disputes, uprooting of beacons, and difficulties in the payment of surveyor's fees.

These difficulties notwithstanding, the committee backtracked on a general members' resolution that all land parcels be equalized among members except for families with many unregistered young men, or in areas where resource attributes compromised productivity. When the exercise was completed, parcels were found to be unequal, with more than 60% of registered members having holdings substantially smaller than the average. Land was concentrated in the hands of committee members, their friends, relatives and the wealthy herders. Disfavored individuals did not get the locations of their choice and many were relocated to remote and/or unproductive areas. In

addition to the unequal parcel sizes and locations, there were complaints over poor planning of roads and public routes. In Meto for example, there were complaints that shorter routes to water points were blocked and instead allocated to the committee, thus making the routes to water longer.

Perhaps the most damning accusation against the committee has to do with its transferring the parcels of those who had paid clearance fees and been shown their parcels, but due to financial constraints had not yet claimed their land titles, to those who were/are able to pay the title fees. This problem of titles is even more serious because all individuals were required to pay a uniform title fee regardless of parcel size and land attributes yet the land registry at Kajiado ordinarily assesses differential title fees depending on parcel size and land potential. Nothing has been done to resolve these irregularities.

That the subdivision resulted in unequal-size parcels based on kinship and friendship as well as wealth and status is hardly surprising. Group members dissatisfied with this outcome contested the decision by local means of arbitration such as through the council of elders, by government administration, as well as in the courts. They did not win. Others, fearing victimization by a vengeful committee, or due to lack of resources, did not organize to contest the outcomes.

The state, through both its administrative arm under the office of the District Commissioner and its development related departments, was important in this process. District government administration was called in as an arbiter to resolve pressing equity concerns, while the departments of land adjudication and of livestock development were required to advise group ranches in the method and conduct of subdivision. The potential role that district administration and government departments could have played in the subdivision were subdued by the Land (Group Representatives) Act, which was silent over the distributional aspects of group ranch dissolution. It however reiterates the group ranch committees' powers by requiring that the committee continue to act in their capacity up until the time when *all* titles have been collected by their respective owners, at which they and the group ranch would be formally dissolved.

Thus the 'how' part of subdivision was absent. The law failed to provide guidance on how collective assets would be distributed amongst members upon group ranch

dissolution, leaving extensive discretion to the committee who took advantage of this omission. The committee unilaterally determined the sizes of land parcels, where to locate individuals after subdivision, and most importantly, ensured their role as signatories to the emerging land titles. If the Group (Land Representatives) Act had provided a general indication of how group land should be allocated, the potential for abuse would likely have been limited. Indeed, any court adjudicating group ranch disputes would have been obligated to give it serious consideration. In addition, failure by the land control board to enforce accountability enabled the committee to achieve its unequal allocation. Thus the committee had legal recognition and state sponsorship. Beyond this it had a privileged knowledge and understanding of the process; a process that is unprecedented in Maasai history. The committee's influence and authority derived legitimacy from traditional customary institutions.

What can we make of this process of subdivision in the group ranches that were studied? To be sure, theoretical expectations were lived out. Concern over distribution provided the impetus for institutional change. This concern saw members agreeing on an equal share allocation mechanism. Uncharacteristically, those likely to be most disadvantaged by the proposed assignment, the wealthy herd owners, were silent and did not organize to block or to reverse it. Indeed, they appeared to endorse the equal allocation formula. This is significant and seemingly inconsistent with theoretical expectation. However, the outcome of subdivision favored these wealthy herders as they received larger parcels than most others. They used their influence to successfully negotiate their preferred arrangement in a potentially disadvantageous situation. The committee tacitly subverted the agreed upon formula and instead implemented one that preserved status quo relations. Side payments occurred.

The distribution did not end the conflict a new set of individuals dissatisfied with the results emerged. The committee, using its authority and power derived from both state and custom, intimidated some people into submitting and accepting the undesirable allocation under the new property rights assignment. Their threats of withdrawing parcels from complainers and re-distributing to other interested parties were indeed credible, and some individuals from Meto and Nentanai did not organize to further challenge the committees' allocation. Some were frightened, others just grateful that they received

parcels in the light of possibility of missing out, yet others were too scattered or too poor as in Nentanai to offer a forceful challenge. But in Enkaroni, dissatisfied individuals did not give in to the committees' threats and intimidation because they had some resources to contest the outcome. Owing to committee influence, however, they lost at the courts and gave up. The committee was able to use the state's power to induce compliance to the new institution.

Power asymmetries between the group ranch members and the committee resulted in the suppression and/or in the quashing of conflict. The committee effectively resolved conflict over property rights assignments either by credibly committing to pursue their threats by constraining group members from contesting their solution, or by invoking the coercive power of the state, which forced individuals to comply with the new property assignment. The transformation is about bargaining and negotiating among various actors as well as the use of the state's power to terminate conflict. The state is an active participant in these negotiations; it is analytically incomplete to leave out the state. But it also seems as though power asymmetries can serve to resolve conflict only so far as the weaker parties are unable to or choose not to organize a challenge. Where actors are able to systematically organize and sustain contests, power asymmetries amongst bargaining parties don't seem able to resolve conflicts, and consequently the state and its instruments are called into play.

The question of why mechanisms that would have achieved less bias in the distribution of resources at an earlier juncture did not have their intended impact merits further discussion. It seems to extend beyond the notion of committee power and control to touch on issues of accountability that have been alluded to earlier. Many group ranch members who were not "well connected," drew upon the prior reputation of committee members and presumed the committee would be fair in the allocations. But customary constraints were ineffective. Instead the committee avoided an equal distribution and secretly gave more resources to the wealthy who were satisfied with the results and did not organize to block institutional change. Because the whole process was embedded in a corrupt administrative regime, the committee was sure of getting away with such a skewed allocation. There were many prior cases of unequal subdivision within the district. Land grabbing was also rife in the district. It was tolerated by local and national

politicians and by the district's government administration who often worked in collusion. The contrived 'hands-off' approach by the District's Land Control Board and the Land Adjudication Department closed off avenues for the redress of member dissatisfaction. Ultimately the subdivision exercise by the committee was a one-off exercise that was conducted in secret. Cultural constraints were severely undermined by the combination of corruption, of top-down external decision making, of secrecy and of one-off decision making. Quite clearly, simply moving decisions from the center to the periphery in a system that has lost accountability and the capabilities of earlier institutions does not necessarily improve equity or efficiency.

Conclusion

The study's findings seem to affirm scholarly predictions. Libecap (2003, 1998, 1989), Eggertsson (1998, 1996, 1990), Firmin-Sellers(1996, 1995) and Knight (1992) suggest that the problem of how assets are distributed among rights holders in an evolving property rights structure creates conflict among differentiated actors as they attempt to secure their claims. This is seen in the conflicts among group members who were allocated small parcels and the unyielding committee. The allocation was contrary to that which had been endorsed by the entire group membership prior to subdivision.

As suggested by Knight (1992) conflict is resolved by credible threats from powerful community actors directed against weaker individuals. The committee was able to threaten those complaining over distribution by actually further reducing their assets. In some instances the committee was unable to intimidate individuals and some parties contested the inequitable distribution through the judiciary. The court ruled against the plaintiffs and the power of the state was used to coerce the acceptance of those opposed and to see to the implementation of the new property structure. This conforms to Firmin-Sellers (1996, 1995) arguments that state coercion is crucial in terminating conflict.

That the elite would capture the process of land allocation is not unexpected either. Bates (1989) shows that during land registration in colonial Kenya, educated and administrative elites were allocated larger land units. They understood the colonizer's language and law. In Botswana, leaseholds were granted to large livestock owners (Thomas et al 2000; Little 1999; Peters, 1987); in Rajasthan in India, the land reforms of

1952 resulted in former common lands being transferred to wealthy families (Jodha, 1992, 1987); in Senegal range privatization advantaged wealthy cattle owners (Thebaud et al, 1995), just as it did in Cameroon (Goheen, 1988).

This study has illustrated the socio-political context in which property rights emerge. The case for placing politics at the center of property rights transformations cannot be over emphasized. Struggles over the division of income and wealth in the new property assignment and the use of power to end conflict over assignments are hallmark features of the process. What lessons do we draw for the conduct of policy and for the ability to reform policy?

Clearly change is strongly influenced by the governance regime in which individuals are embedded; this may determine the speed, efficiency and effectiveness of reform. Scholars studying processes of institutional creation and sustainability among local, self-governing communities suggest that the probability of adoption of efficient and effective rules is increased where governments provide back up mechanisms for local monitoring, sanctioning and conflict resolution processes (Eggertsson, 1996; Ostrom and Schlager, 1996; Ostrom, 1990). These arguments are relevant to the individualization of Maasailand. Where systems in the wider social and political order are not accountable, it is unlikely that decentralized policy reforms will be accountable. This lack of accountability creates opportunity for rent-seeking behavior among rational actors.

This, and other, studies demonstrate that the move to private, individualized land holdings, that have been so important in the economic development of the West is fraught with problems that could undermine the potential economic gains that had been hoped for.

In what other ways could outcomes have been improved? How else could committee self-interest have been more successfully checked? While a straight-up lottery system of allocation, which occludes information on individuals' relative wealth and positions within the community, might well serve to contain self-interest and opportunism, it may not result in an acceptable distributional outcome under circumstances of heterogeneous resource distribution. In the subdivision of the Mexican ejidos for example, ejido members accepted the lottery system of allocation in areas of greater resource homogeneity (Munoz-Pina et al, 2003). However, where the distribution

of resources was heterogeneous and of variable productivity, members avoided the subdivision altogether. The lottery system on its own would have been an inadequate mechanism for achieving distributional equity.

There are cases however where land of variable quality has been subdivided fairly equally amongst a heterogeneous (wealth and caste) community of customary users in Senegal (Bloch, 1993). This subdivision ensured that slightly larger land units were allocated to larger families. More importantly, the allocation mechanism ensured that individual families were allocated land in both high and low productive zones. Importantly, the allocation was supervised by an external agent, the USAID.

These observations in Mexico and Senegal, and the difficulties experienced during group ranch subdivision suggest that a favorable allocation outcome must be sensitive to spatial heterogeneities in resource distribution and must also reasonably conform to the differences in resource appropriation by the various production units. Indeed, it seems the case that post subdivision asset distribution is faced by strong pressures to maintain the pre-subdivision wealth distribution. These economic pressures seem to override ideological notions of equality and fair play even in small societies where norms that structure interactions are fairly strong.

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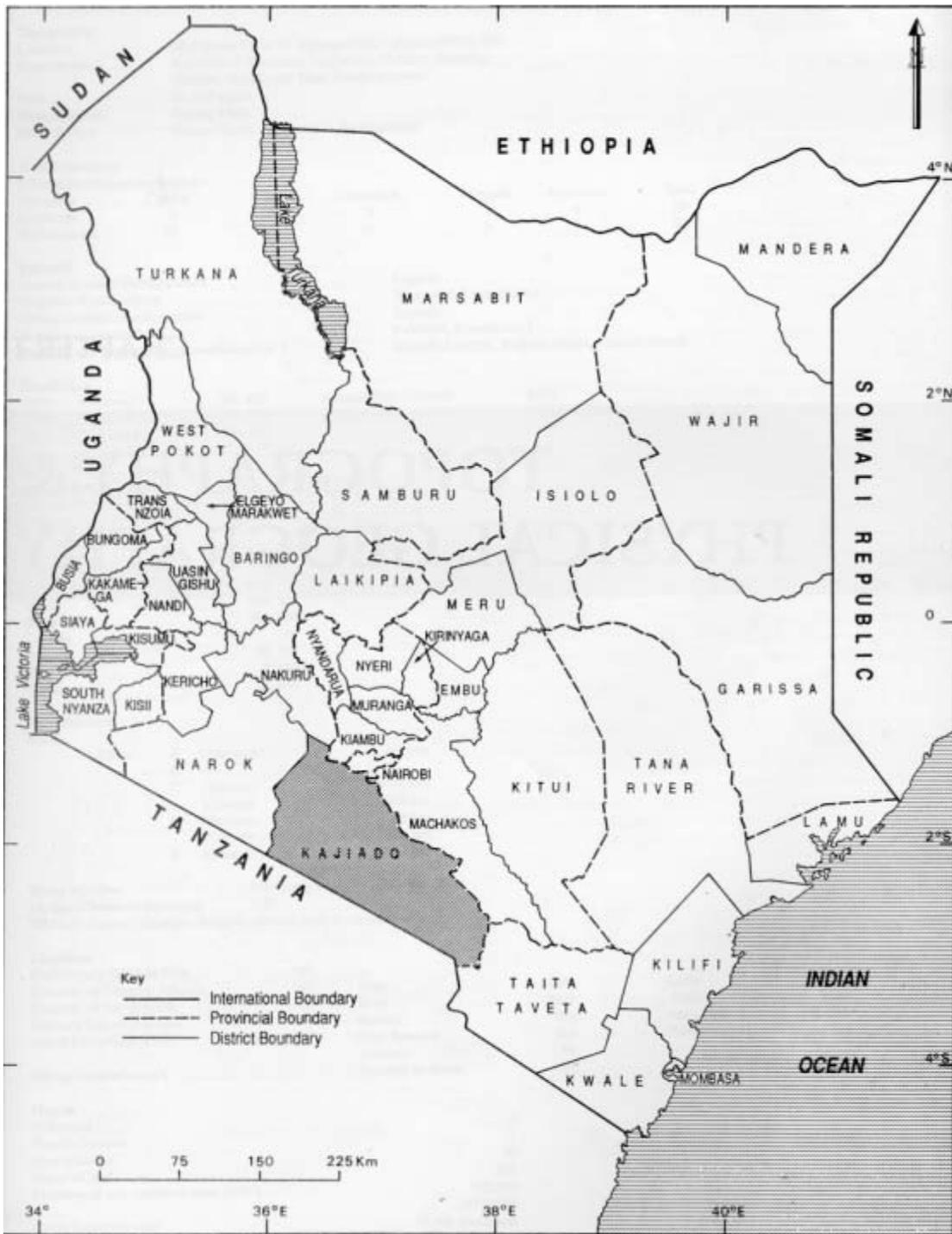


Figure 1: Location of Kajiado District in Kenya

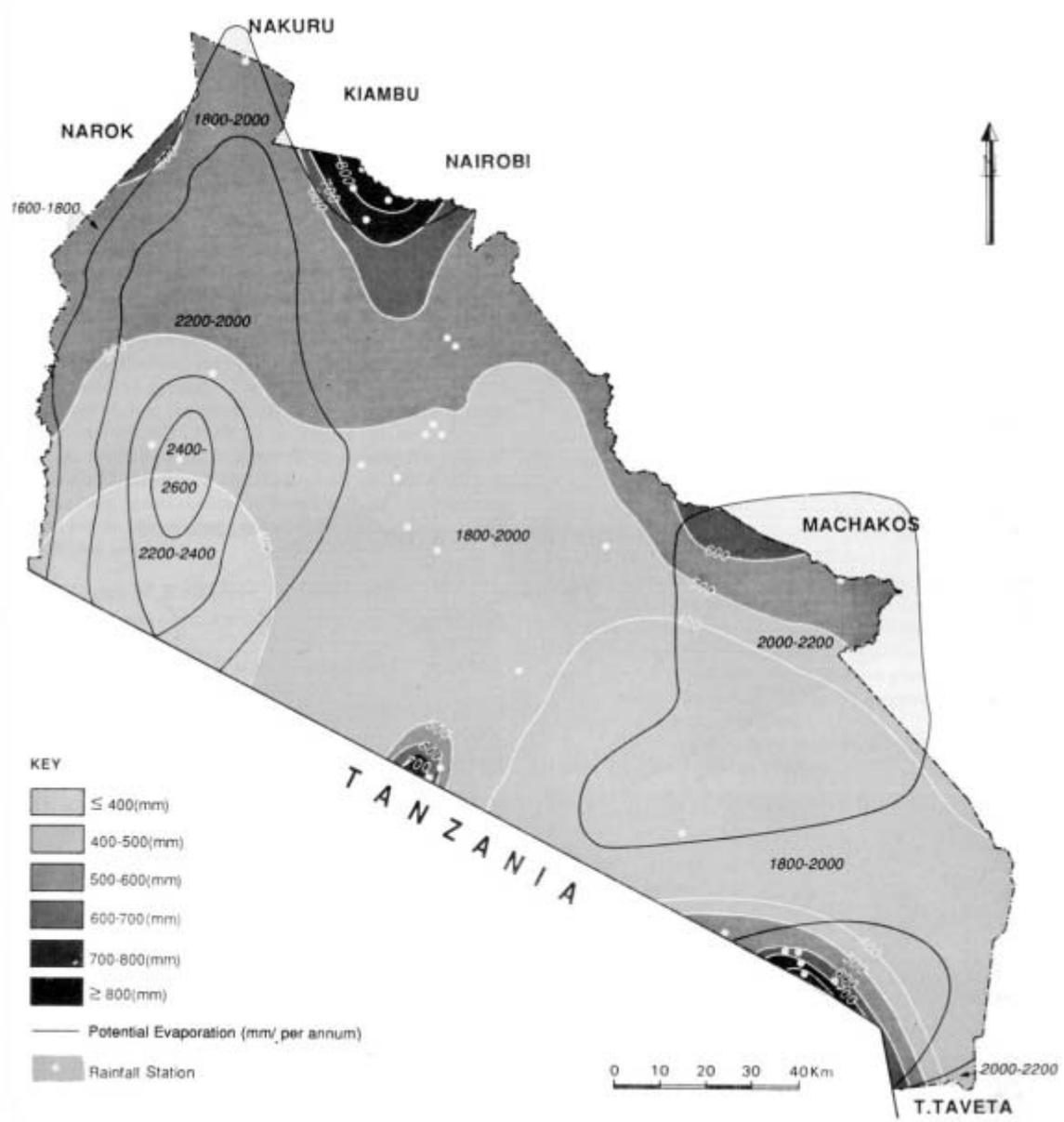


Figure 3: Mean Annual Rainfall in Kajiado District



Figure 4: Distribution of Group and Individual Ranches in Kajiado District

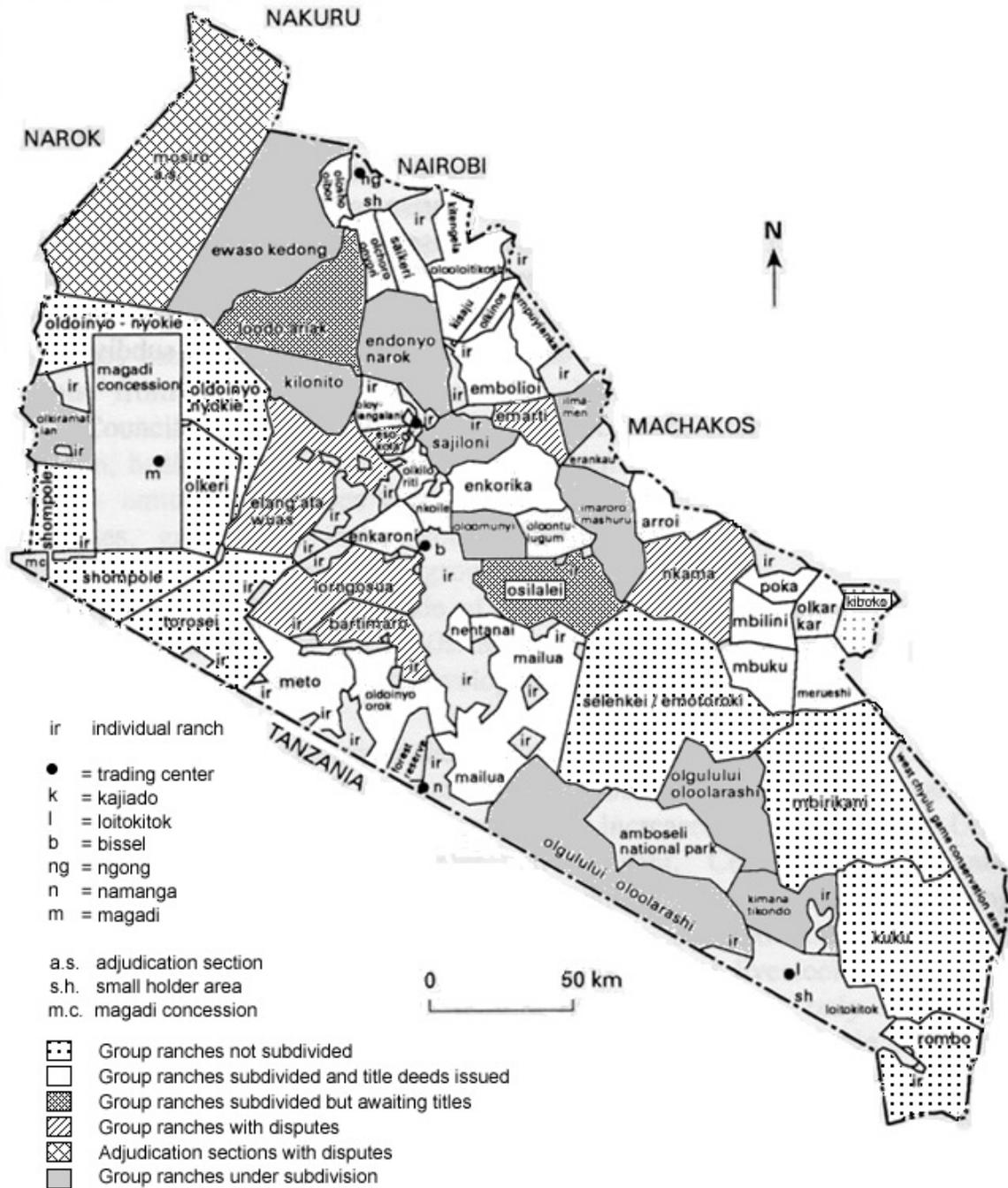


Figure 5: Subdivision Status of Group Ranches in Kajiado District



Figure 6: Sections of the Maasai in Kajiado District

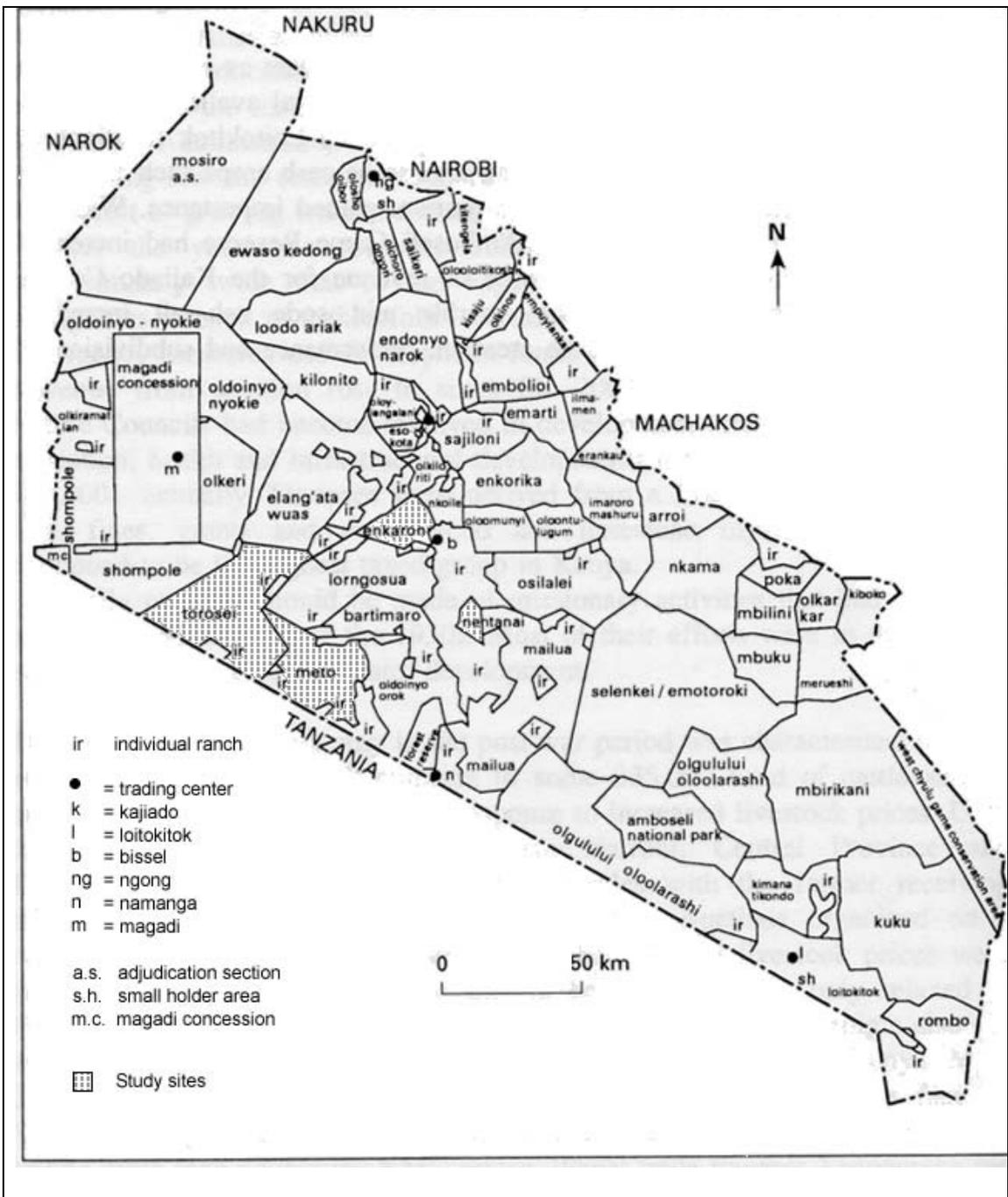


Figure 7: Location of Study Sites (Enkaroni, Meto, Nentanai, Torosei)